In the High Court of Punjab and Haryana at Chandigarh.

CR No.3506 of 2007
Date of decision: 09.08.2007

Ravi Sharma ....Petitioner

Versus

Sanjiv Kumar Jain and others.....Respondents.

CORAM
HON'BLE MR. JUSTICE PERMOD KOHLI

Present: Mr. Harjinder Singh, Senior Advocate, with
Mr.SS Behl, Advocate, for the petitioner.

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PERMOD KOHLI, J.

Invoking jurisdiction of this Court under Article 227 of the Constitution of India, validity of the order dated 15.3.2007, Annexure P-4, passed by the learned Civil Judge (Senior Division), Gurgaon, has been questioned, by the petitioner-defendant. In a suit filed by the plaintiffs Sanjiv Kumar Jain and Smt.Amita Jain, claiming specific performance of sale agreement dated 4.12.2005, the petitioner-defendant Ravi Sharma filed an application under Order VII Rule 11 of the Code of Civil, Procedure for rejection of the plaint, inter-alia, on the following grounds:-

(i) That the plaint did not disclose cause of action in favour of the plaintiffs and against the defendants.

(ii) The alleged agreement, the basis of the suit, has been obtained by fraud and mis-representation and the same is malafide.

This application was resisted by the plaintiff-respondents, who preferred objections to the same pleading therein that the plaint discloses cause of action, the agreement is enforceable in law, the allegations that the agreement has been procured by fraud and mis-representation, are also denied.

The learned trial Court vide its detailed order dated 15.3.2007, Annexure P-4, dismissed the application filed by the petitioner-defendant by holding that the plaint discloses cause of action in paragraph 17 thereof. The learned trial Court also noticed various averments in the plaint and stated that the question whether the agreement has been procured by fraud, mis-representation and deceit, constitute triable issue.

Mr.Harjinder Singh,learned Senior Advocate appearing for the petitioner has made elaborate and detailed submissions.

I have perused the impugned order, the plaint and the application, copies whereof have been placed on the record of this revision petition.

The expression cause of action has not been defined in the Code of Civil Procedure. It also cannot be defined in a straight-jacket manner. However, the expression has been explained by the Hon'ble Apex Court in Mayar (H.K.) Ltd. & Ors. Vs. Owners & Parties, Vessel M. V. Fortune Express & Ors., 2006 (2) Civil Court Cases, 15, in paragraph 11 of

the judgment, which is as under:-

> "A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.

In order to appreciate the contention of the petitioner, I have also scanned the plaint. It may be relevant to briefly refer to some of the averments in paragraphs 2, 9, 10, 13 and 17, of the plaint:-

> "2. That the defendant No.1 had agreed to sell away the said plot described in para no.1 of the plaint in favour of the plaintiff no.1 and his nominee as the case may be for a total sale consideration of Rs.2, 22, 00, 000/- (Rs.Two Crore Twenty Two lacs only) free from all/ any encumbrances lien, charge of claim against the property and duly executed and signed a written sale agreement in favour of plaintiff no.1 on 04.12.2005 at Panchkula (Haryana).....The defendant no.1

received a sum of Rs.10,00,000/- from the plaintiff no.1 comprising of Rs.2 lac in cash and Rs.8 lacs vide cheque no.393873 dated 04.12.2005 drawn on Centurian Bank Ltd. Chandigarh by way of earnest money/part sale consideration and the balance sale consideration was agreed to be paid at the time of registering of the sale deed and delivery of peaceful vacant possession to the purchaser free from any encumbrances. The sale deed was agreed to be effected upto 31.3.2006 or within 10 days from the receipt of NOC and transfer permission which ever is later.

9. That there is concluded written sale agreement between the parties dated 04.12.2005 which is fully enforceable under law. After ten/fifteen days of the sale agreement the defendant no.1 insisted to make some additional payment of Rs.20 lacs to him for clearance of dues of the defendant no.2 and for his or her personal needs and consequently the plaintiff no.1 made a further payment of Rs.20 lacs to the defendant no.1 vide five demand drafts of Rs.4 lacs each all dated 28.12.2005, bearing draft no.895126 to 895130 drawn on Centurian Bank, Chandigarh, which were duly en-cahsed by the defendant no.1 and the defendant no.1 also acknowledged the receipt of said amount of Rs.20 lacs under his signatures on 29.12.2005 as second receipt on

the back of first page of the sale agreement dated 04.12.2005, copy of which is already attached.

10. That the plaintiffs had always been ready and willing and are continuing to be ready and willing to get the sale deed completed in their favour in terms of the sale agreement dated 04.12.2005 and they have ready money for payment towards balance sale consideration and expenses on stamp registration charges.

13. That the plaintiffs had been requesting the defendant no.1 to perform his part of contract and to get the sale deed completed in favour of the plaintiffs and thereafter notice dated 28.03.2006, 15.04.2006 and telegram dated 30.03.2006 were issued to the defendant no.1.

17. That the cause of action for filing the present suit had firstly arisen on 31.03.2006 when the defendant no.1 failed to clear the dues of the defendant no.2 and failed to obtain NOC and conveyance deed to get the sale deed completed in favour of plaintiffs and subsequently it has arisen even a week ago, when the defendants refused to get the sale deed completed in favour of plaintiffs to waste the property to change its nature and tried to alienate the same to some other persons in collusion with defendant no.2, hence the plaintiffs have cause of action

for filing the present suit."

Specific averments contained in the plaint as noticed here-in-above, clearly disclose cause of action. It may not be out of place to mention here that in a suit for specific performance of contract, the material facts are :-

(1) due execution of the contract for sale;

(2) fixation of sale consideration;

(3) payment of earnest money, if any;

(4) readiness and willingness of the vendee to perform contract; and

(5) non-performance of contract by the vendor.

All these material and necessary facts have been pleaded in the plaint.

Mr.Singh has tried to canvass that the plaint is deficient of necessary pleadings and material facts like, the details of availability of funds with plaintiffs at the time of the execution of the agreement to sell, not pleaded. He has further submitted that the defendants have denied the execution of the agreement to sell and same has also been procured by fraud and misrepresentation. His further contention is that fraud and misrepresentation vitiates the contract. To support his contention, he has referred to Hamza Haji Vs. State of Kerala and another, (2006) 7 SCC, 416 and Commissioner of Customs, Kandla Vs. M/s. Essar Oil Ltd. and Ors,. JT 2004 (9), S.C., 12. It has been held in these judgments that the fraud vitiates the decision and a party, who has secured the decision by fraud, cannot be allowed to enjoy its fruits. There is no dispute with this

proposition of law. However, whether any transaction has been entered into by misrepresentation, deceit or fraud, is a question of fact. It is settled law that facts are not only to be specifically pleaded, but also to be established by evidence. A plain reading of the plaint does not disclose any such material wherefrom, fraud, deceit or misrepresentation on the part of the plaintiffs can be detected. If the petitioner-defendant has taken a plea of exercise of fraud by the plaintiffs in the written statement or even in the application under Order VII Rule 11 of the Code of Civil Procedure, it can only constitute a triable issue. Unless the plaint and documents annexed thereto, disclose apparent misrepresentation or fraud, no cognizance can be taken of the plea in the written statement for purposes of Order VII Rule 11 of the Code of Civil Procedure. No such material has been brought to my notice. The plaint can only be rejected if one or more of the conditions specified under Order VII Rule 11 of the Code of Civil Procedure are satisfied. Order VII Rule 11 of the Code of Civil Procedure reads as under:-

> "Rejection of plaint:
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> The plaint shall be rejected in the following cases:-
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> (a) where it does not disclose a cause of action;
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> (b) where the relief claimed is under-valued, and the plaintiff, being required by the Court to so correct the valuation within a

time to be fixed by the Court, fails to do so;

(c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate

(f) where the plaintiff fails to comply with the provisions of rule 9.

....."

In any case, for the purpose of Order VII Rule 11 of the Code of Civil Procedure, the Court is not to look into the defence of the defendants or even the written statement. In the case of Mayar (H.K.) Ltd. & Ors. Vs. Owners & Parties, Vessel M. V. Fortune Express & Ors., 2006 (2) Civil Court Cases, 15, the Hon'ble Supreme Court in para 11 held as under:-

> "From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct."

Mr Singh's arguments regarding validity of the agreement also cannot be accepted as the same has to be tested after the trial.

The next contention of the learned counsel for the petitioner is that the plaint does not reveal that the plaintiffs had necessary funds at the time of the alleged execution of the agreement or when the sale deed was to be executed. According to him, it is the bounden duty of the plaintiffs to have disclosed the source of funds and his financial capacity to discharge his liability of payment of consideration, but the plaintiffs have not disclosed anything regarding their financial position on the relevant dates.

From the perusal of the plaint, it is evident that in paragraphs10 and 12 of the plaint quoted here-in-above, the plaintiffs have stated that they have ready money for payment towards balance sale consideration and expenses of stamp and registration charges etc. In paragraph 13 of the plaint, again it has been mentioned that "the plaintiffs had come present on

31.03.2006 with ready money in the office of the Sub Registrar, Gurgaon, to get the sale deed completed in their favour." These averments are sufficient compliance of requirement of law. The plaintiffs are required only to state material facts in the plaint and not the evidence. In view of these specific allegations contained in the plaint, the contention of the learned counsel for the petitioner is without any substance and cannot be accepted.

In the light of the detailed factual background as has emerged from the record and the legal position noticed above, I affirm the impugned judgment and dismiss this revision petition with no order as to costs.

(Permod Kohli)

August 09, 2007.
BLS

Note: To be referred to Reporter: YES